SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 186

FLOYD L. LAND,

Petitioner,

vs.

ETHEL ROSENBERG BASS, JOINED BY HER HUSBAND AND NEXT FRIEND, WALTER C. BASS,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of the Court Below.

Opinion of the Circuit Court of Appeals does not appear in any of the official or advance sheets of the reporter systems but copy thereof appears at pages 86-90 of the Record.

II.

Jurisdiction.

1. Jurisdiction is invoked under Judicial Code, Section 240, as amended by the Act of February 13, 1925, 43 Stat. 938, 28 U. S. C. A., Section 347.

2. The date of the judgment to be reviewed is May 2, 1944. Rehearing denied May 31, 1944.

3. The nature of the case, and the fact that the rulings below were such as to bring this case within the jurisdictional provisions relied on, are fully disclosed in the petition for writ of certiorari under Subdivisons "A" and "B".

4. The following are the cases relied on to sustain the jurisdiction:

Bowles v. *Willingham*, 88 L. Ed. Advance Sheet No. 11, 626;

Hecht Co. v. *Bowles*, 64 S. Ct. 587; 88 L. Ed. Advance Sheet No. 9, 465;

Lockerty v. *Phillips*, 319 U. S. 182; 87 L. Ed. 1339; 63 S. Ct. 1019;

Tyson v. *United States*, 297 U. S. 121; 56 S. Ct. 390; 80 L. Ed. 520.

III.

Statement of Case.

The statement of case is fully set forth in the petition for writ of certiorari and for the sake of brevity will be omitted here.

IV.

Specification of Errors.

The Circuit Court of Appeals erred:

1. In affirming the District Court wherein it held that the property involved herein had been released from maximum rent regulation by virtue of Supplemental Amendment No. 15 issued by the Office of Price Administration.

2. In sustaining the action of the Trial Court dismissing the Complaint on Motion to Dismiss without hearing

the case upon its merits where the plaintiff alleged facts which showed that plaintiff was entitled to the continued possession of "housing accommodations" under the terms and provisions of the Emergency Price Control Act.

3. In sustaining the action of the Trial Court in denying injunctive relief to plaintiff against eviction proceedings in the State Court where, under the local State law, plaintiff had alleged a case which entitled him to specific performance of an oral agreement to lease the property involved for a further period of time after the expiration of the existing lease.

4. In holding that the purpose of the Emergency Price Control Act was not to freeze the landlord-tenant relationship existing as of the freeze date so that the legal obligation of the tenant to quit was suspended, as well as the rights and powers of the landlord, so long as the tenant continued to pay his rent and was not otherwise in default.

5. In holding that the rental act for the District of Columbia was a special and different rent control act than that which was operative in the area involved in this case.

6. In failing and refusing to hold that the Office of Price Administration had not determined that plaintiff was entitled to an underlying lease from the defendant so as to prevent his being excluded from the property, and in denying the plaintiff the right to prove this fact.

7. In failing and refusing to follow the decisions of the Supreme Court of Florida with respect to plaintiff's right to specific performance of an oral agreement to lease.

8. In failing to properly interpret and construe the effect of Supplemental Amendment No. 15 issued by the Office of Price Administration as applied to the case presented by plaintiff in his Complaint and in holding that

plaintiff had not pleaded a case which was an exception under said Supplemental Amendment.

V.

ARGUMENT.

Summary of Argument.

A. The District Court held that the property involved herein was released from maximum rent regulation by virtue of Supplemental Amendment No. 15 issued by the Office of Price Administration. The Area Rent Director admitted that he had not determined whether or not there was an underlying lease. Plaintiff charged an underlying lease and further facts which brought the property within the exceptions provided for in said Amendment. The Circuit Court of Appeals affirmed the action of the District Court. It is submitted that both Courts were in error.

B. The District Court dismissed the Complaint on Motion to Dismiss without a hearing upon the merits of the case. The allegation made by plaintiff, if true, should have entitled him to the privilege of offering proof so as to preserve his right to continued possession of the "housing accommodations." Under the provisions of the Emergency Price Control Act, properly interpreted, he had pleaded a case entitling him to this relief against the eviction proceedings. Both the District Court and the Circuit Court of Appeals erred in depriving plaintiff of this right.

C. Plaintiff sought an injunction against eviction proceedings in the State Court and charged the defendants with acts which violate the provisions of the Emergency Price Control Act relating to eviction of tenants. The Trial Court dismissed the Complaint on Motion of Defendant although under local State law plaintiff had alleged an oral

agreement with such part performance thereof as would have entitled him to specific performance of the agreement under the decisions of the Florida Supreme Court. Both the Circuit Court of Appeals and the District Court erred in holding that plaintiff should be deprived of his opportunity of proving the allegations of his Complaint.

D. The purpose of the Emergency Price Control Act was to freeze the landlord-tenant relationship existing as of the freeze date, and under the facts pleaded plaintiff was a tenant at the time this Area was brought under the terms of the Act. Under the facts pleaded there was no default either in the payment of rent or otherwise, which would have entitled the landlord to have disturbed this relationship. Both the District Court and the Circuit Court of Appeals failed to follow the decision of the Circuit Court of Appeals for the District of Columbia which held, in a similar case, that the purpose of the Act was as stated above. The holding in the instant case conflicts with the cited case and it is submitted that the cited case is correct and the holding of the Fifth Circuit Court of Appeals is in error.

A.

QUESTION No. 1.

Was the Trial Court in error in holding that the property involved herein was released from maximum rent regulation by virtue of supplemental Amendment No. 15 issued by the Office of Price Administration?

Supplemental Amendment No. 15 (shown on pages 7 and 8 of the Record) is so worded that it only operates to exclude "entire structures or premises" with more than twenty-five rooms and further provides for an exception where there is an underlying lease entered into after Oc-

tober 1, 1941, and prior to the effective date of the regulation, which such lease remains in force with no power of the tenant to cancel or otherwise terminate the lease.

Plaintiff alleged that the property did not consist of the entire structure but was only a part thereof and that he held such an underlying lease.

We submit that it was an error to have granted a Motion to Dismiss the Complaint when the motion admitted the truth of the allegations for the purpose of this determination.

B.

QUESTION NO. 2.

Should the Trial Court dismiss a complaint on a motion to dismiss without hearing the case upon its merits in a case where the allegations show plaintiff to be entitled to the continued possession of "Housing accommodations," under the terms and provisions of the Emergency Price Control Act?

The case should have been heard upon its merits. This question was presented to the Circuit Court of Appeals of the Fifth Circuit in the case of *Henderson, Administrator, Office of Price Administration* v. *Fleckinger, et al.* (C. C. A. 5) 136 F. 2d 381. The Trial Court had dismissed the Complaint on motion. The Circuit Court of Appeals reversed the Trial Court, holding that if a violation of the law is charged, the case should be tried on its merits.

The Henderson case, *supra,* was cited and followed in the case of *Brown, Administrator, Office of Price Administration* v. *Wright* (C. C. A. 4), 137 F. 2d 484.

To the same effect, *Brown* v. *Quinlan* (C. C. A. 7) 138 F. 2d 228.

C.

QUESTION NO. 3.

Where plaintiff seeks injunction against eviction proceedings in a State Court and charges defendant with acts which violate the provisions of the Emergency Price Control Act relating to eviction of tenants, should the Trial Court dismiss the complaint on defendant's motion to dismiss without a hearing upon the merits in a case where, under the local State law, plaintiff was entitled to have an oral agreement enforced by decree of specific performance?

If, under the State law, plaintiff was entitled to specific performance of his oral agreement to extend the lease, it was error for the Court to have dismissed his Complaint.

That a parol contract for lease may be enforced by a court of equity has been decided by the Supreme Court of Florida in the following cases:

General Motors Acceptance Corporation v. *Lynch Building Corporation*, 118 Fla. 2, 159, So. 785;

Hotel Halcyon Corporation v. *Miami Real Estate Co.*, 89 Fla. 156, 103 So. 403;

Stone v. *Barnes-Jackson Co., Inc.* (Fla.), 176 So. 767.

In the last cited case the Trial Court was reversed because of dismissing the bill on Motion to Dismiss. Plaintiff not only alleged the oral agreement but the expenditure of moneys in reliance upon the agreement, which was sufficient part performance to take the case out of the Statute of Frauds.

D.

QUESTION NO. 4.

Under the Emergency Price Control Act, was the purpose of the Act to freeze the landlord-tenant relationship existing as of the freeze date so that the legal obligation of the tenant to quit is suspended as well as the rights and powers of the landlord so long as the tenant continued to pay his rent and is otherwise not in default?

The case of *Myers* v. *H. L. Rust Co.* (U. S. C. A. D. C.), 134 F. 2d 417, expressly holds that the purpose of the Emergency Rent Act was to freeze the landlord-tenant relationship and as is pointed out in the case of *Bowles* v. *Willingham,* 88 L. Ed. Advance Sheet No. 11, page 626, on pages 640 and 642 of the Reporter:

> "The statute of its own force is not applicable in any area except the District of Columbia unless and until so made by a regulation of the Administrator." (p. 640.)

Again on page 642:

> "Save for the District of Columbia, the designation of an area where the Act is to operate depends wholly upon the Administrator's judgment that so-called defense activities have resulted or threatened to result in an increase of rents inconsistent with the purposes of the Act."

It would therefore appear that the only distinction between the instant case and the *Myers* case, *supra,* is that the Office of Price Administration issued Regulation No. 55, which brought the Orlando Area, where the property in question is located, within the Defense-Rental Area.

It is, therefore, submitted that the Circuit Court of Appeals was in error in undertaking to distinguish the holding in the *Myers* case, *supra*, with that of the case at Bar.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise of this Court's supervisory powers in order that the proper construction of the Emergency Price Control Act and regulations issued thereunder may be had, settled, and determined; that the conflicts and contrariety of opinion herein disclosed may be settled amicably and that the practice and procedure relating to Federal Courts may be more clearly defined; and that a matter of so vital a concern to the public may be clarified so as to enable a better administration of the Federal Act involved. Plaintiff respectfully submits that writ of certiorari should be granted and that this Honorable Court should review the decision of the Circuit Court of Appeals and finally reverse it.

Dated at Orlando, Florida, this 14th day of June, A. D. 1944.

Respectfully submitted,

CLAUDE L. GRAY.

CLAUDE L. GRAY,
509-11 Exchange Building,
Orlando, Florida;
Attorney for Petitioner.